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COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy to conduct mandatory thousands-block number pooling trials pursuant to the authority delegated by the Federal Communications Commission.

D. T. E. 99-99

MOTION OF AT&T WIRELESS SERVICES FOR
PROTECTIVE TREATMENT OF THE AFFIDAVIT OF ANNE CUMMINS,
AS IT CONTAINS PROPRIETARY AND CONFIDENTIAL INFORMATION

AT&T Wireless Services ("AWS") - the formal name of which is Wireless PCS, Inc., a wholly-owned subsidiary of AT&T Wireless Services, Inc. - hereby requests that the Department of Telecommunications and Energy (the "Department") grant protection from public disclosure for certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D. Specifically, AT&T requests that the Affidavit of Anne Cummins be kept confidential, as it contains extremely competitively sensitive and proprietary information. AT&T requests that this submission be afforded the highest level of protective treatment and that it be made available to the Department only.

I. Legal Standard.

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has recognized that competitively sensitive information is entitled to protective status. See, e.g., Hearing Officer's Ruling On the Motion of CMRS Providers for Protective Treatment and Requests for Non-Disclosure Agreement, D.P.U. 95-59B, at 7-8 (1997) (the Department recognized that competitively sensitive and proprietary information should be protected and that such protection is desirable as a matter of public policy in a competitive market).

II. Argument.

The information contained in the Affidavit of Anne Cummins is competitively sensitive, proprietary, and confidential. It consists of information regarding the rate at which AWS has made, and expects to make, use of telephone numbers and NXX codes in Massachusetts.

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The Federal Communications Commission has directed that information of this sort must be kept confidential by state regulatory commissions. In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, Report and Order No. FCC 00-104, ¶¶ 77-78, 81 (released March 31, 2000).

In a memorandum dated February 25, 2000, the Hearing Officers in this docket stated, in relation to very similar information, that "some of this information could be viewed as trade secrets, confidential, or competitively sensitive proprietary information" and that as a result, "the Hearing Officers . . . will deem the materials confidential, proprietary materials, subject to the need of the Department to use the information contained therein." In so holding, the Department properly recognized that this information is competitively sensitive, should not be disclosed to other parties, and must not become part of the public record of this case.

Conclusion.

For these reasons, AWS requests that the Department grant protection from public disclosure of this confidential, competitively sensitive information submitted in this proceeding, in accordance with G.L. c. 25, § 5D.

Respectfully submitted,

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Dated: April 21, 2000.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on April 21, 2000.
